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In the Supreme Court of the United States

OCTOBER TERM, 1933

No. —

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, petitioner

v.

THE NEWPORT COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of Guy T. Helvering, Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Seventh Circuit entered in the above-entitled cause July 8, 1933, affirming a decision of the Board of Tax Appeals (R. 143).

OPINIONS BELOW

The opinion of the Circuit Court of Appeals is reported in 65 F. (2d) 925. The opinion of the Board of Tax Appeals (R. 126–143) is reported in 22 B.T.A. 833.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered July 8, 1933. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Respondent, who was liable as transferee of the assets of another corporation, executed after the enactment of the Revenue Act of 1926 an instrument stating that the transferor waives the statutory period for making assessment of its tax liability. The instrument was signed by respondent as "taxpayer" and "as successor in interest" of the transferor. If certain other waivers executed in the name of the transferor after its dissolution should be held invalid, the statute had run before the execution of this waiver. The questions are:

(a) Whether the instrument may be construed as a waiver of the statute of limitations as against respondent.

(b) Whether a waiver executed after the expiration of the statutory period of assessment and after the enactment of Section 1106 of the Revenue Act of 1926, but prior to the effective date of the Revenue Act of 1928, is valid.

2. Whether an informal waiver of the statute of limitations contained in a protest purporting to be made on behalf of respondent's transferor, verified

by respondent's president and filed with petitioner by respondent, is effective to extend the statutory period for making assessment against respondent.

3. Whether respondent is estopped to deny the validity of several waivers executed in the name of its transferor extending from time to time the period of limitations for making assessment of the transferor's tax liability.

4. Whether the decree of the Supreme Judicial Court of Maine, dissolving the transferor is void and, if so, whether it may be attacked in the present proceeding.

STATUTES INVOLVED

The statutes involved will be found in the Appendix, *infra,* pp. 21–26.

STATEMENT

The respondent is a Delaware corporation formed in 1919, with its principal place of business in Wisconsin. The Newport Chemical Works, Inc. (hereinafter called the Chemical Company), was a Maine corporation, with a factory and offices in Wisconsin. The respondent in the middle of 1919 received all of the assets of the Chemical Company in consideration of the issuance of its shares to the stockholders of the Chemical Company and the assumption of all liabilities of the latter. The assets exceeded in value the amount of tax claimed in this proceeding. (R. 128–129.)

The Chemical Company originally filed, on April 1, 1918, separate income tax and excess profits tax

returns for 1917, showing an income tax liability of $18,405.65 and an excess-profits tax liability of $12,892.03. The Newport Mining Company and the Dunn Iron Mining Company filed a consolidated excess-profits tax return. Petitioner later determined that the three companies were affiliated. (R. 128–129, 18.)

On March 1, 1920, the Supreme Judicial Court of Maine entered a decree dissolving the Chemical Company without the appointment of a trustee or receiver. (R. 129.) The decree recited that the cause was heard on bill and answer and that it appeared that the defendant company had no debts and no assets. (R. 21.) The stockholders' bill specifically alleged "That there are existing liabilities against said corporation and no existing assets thereof, requiring distribution among the stockholders." (R. 19.) The answer admitted the averments of the bill. (R. 20.) On the same day a decree was entered dissolving the Newport Mining Company. (R. 129, 21.)

On March 8, 1921, an income and profits tax return of the Chemical Company for the year 1920 was filed with the Collector of Internal Revenue at Milwaukee, Wisconsin, which showed no income and contained the statement "Not active. Dissolved March 1, 1920. Transacted no business whatsoever during year." An accompanying letter from the Chemical Company stated (R. 129):

> You will note that the company did not operate during the year and hence no net in-

come earned. You will further note that the company's affairs have been wound up and the company legally dissolved.

On April 14, 1920, the taxpayer filed with the Collector of Internal Revenue at Milwaukee, Wisconsin, an affiliated corporation questionnaire for the year 1919, which stated that certain companies of the affiliated group, including the Chemical Company and the Newport Mining Company, were in process of dissolution during 1919. The questionnaire stated that the taxpayer as principal or parent, the Newport Mining Company, the Chemical Company and certain other companies were controlled or owned directly or indirectly by Ferdinand Schlesinger, Mathilda Schlesinger, his wife, Armin A. Schlesinger, his son, Henry J. Schlesinger, his son, and Gertrude MacLaren, his daughter, and that the Schlesingers personally directed the central organization conducting the business in all its activities. (R. 129–130.)

On February 12, 1919, at the last stockholder's meeting of the Newport Chemical Works, Incorporated, the following persons were elected as directors of that company: Ferdinand Schlesinger, H. J. Schlesinger, A. A. Schlesinger, E. G. Wilmer, H. H. Springford, J. W. Shaeffer, M. T. MacLaren. At the last meeting of directors, held February 30, 1919, the following persons were elected as officers: Ferdinand Schlesinger, Chairman of the Board of Directors; A. A. Schlesinger, President; H. J. Schlesinger, Vice President; M. T. MacLaren, Vice

President; E. G. Wilmer, Vice President; J. W. Schaeffer, Vice President in charge of operations; H. J. Schlesinger, Treasurer; H. H. Springford, Secretary; Wilmot Saeger, Assistant Secretary; H. H. Springford, Auditor; C. H. Brook, Assistant Auditor; Elbin H. Hillheffer, Vice President in charge of sales. The first Board of Directors elected for the Newport Company on July 15, 1919, consisted of the following: Ferdinand Schlesinger, Chairman; Henry J. Schlesinger (identical with H. J. Schlesinger), Armin A. Schlesinger (identical with A. A. Schlesinger), Myron T. MacLaren, and Edward G. Wilmer. (R. 25–26.)

Thereafter the Commissioner received notice in connection with the Chemical Company's tax returns for the years 1919 and 1920, that the Company was dissolved. (R. 74, 130.)

The statutory period of limitation for assessment and collection of taxes of the Chemical Company for the year 1917 expired on April 1, 1923.

On December 15, 1920, the Chemical Company, by Edward G. Wilmer, vice president, executed an unlimited waiver of 1917 taxes. (R. 130–131.[1]) On August 13, 1923, the Commissioner notified the Newport Mining Company of a determination of additional taxes for 1917 against the Company and its affiliates, including a tax of $116,065.49 against

[1] On April 11, 1923, the Commissioner issued Mimeograph 3085, stating that all unlimited assessment waivers for the year 1917 would be held to expire April 1, 1924. II-1 Cumulative Bulletin 174.

the Chemical Company. (R. 137, 39–45.) The Newport Mining Company, by Charles F. Fawsett, its general counsel, in October, 1923, filed an appeal in behalf of itself and its affiliates, requesting a redetermination, which concludes with the following statement (R. 137):

> This appeal is taken by the Newport Mining Company for and in behalf of each of the subsidiary and affiliated companies named in said letter of the Department of August 13, 1923, as well as on its own behalf, and it is duly authorized to take such appeal.
> (Signed) THE NEWPORT MINING COMPANY,
> By CHARLES FAWSETT,
> *General Counsel.*

The appeal was verified by H. H. Springford, who avers that he was secretary of the Newport Mining Company until its dissolution in 1920; that he was vice president of respondent and president of the Steel & Tube Company of America, between which two companies the stock and assets of the Newport Mining Company had been divided prior to its dissolution; and that he made the verification in his capacity as vice president of respondent and in the other capacities mentioned and was authorized to do so. (R. 38–39.) Fawsett, who signed the appeal for the Newport Mining Company, was counsel for respondent after the Chemical Company was dissolved (R. 27) and as such passed only upon matters referred specially to him (R. 28).

On February 11, 1924, the Commissioner wrote to the Newport Mining Company enclosing forms

of waiver for several companies, including the Chemical Company, stating that the statute of limitations would expire April 1, 1924, and the Bureau would need more time to carefully consider the case. (R. 131, 75–76.) In reply, the Commissioner received a letter from C. W. Westerman, Secretary of the Newport Company, dated February 23, 1923, enclosing a number of waivers, including a waiver of the Chemical Company, signed by H. J. Schlesinger, vice president, extending for one year the time for collecting 1917 taxes. (R. 132, 56–57, 63.)

On December 3, 1924, the Commissioner notified the Chemical Company of a tentative determination of a deficiency for 1917 of $226,710.08. (R. 137, 46–48.) On December 26, 1924, Fawsett, as general counsel of the Chemical Company and certain other companies, wrote to the Commissioner enclosing waivers including one for 1917, signed by the Chemical Company by H. J. Schlesinger, vice president, extending the time for making assessment to April 1, 1926. (R. 52, 133.) Also enclosed with the letter was a protest on behalf of the Newport Mining Company and another company which protested against the determination that the Chemical Company was not affiliated with them. The protest contains the following statement (R. 138):

> The taxpayers hereby place upon record their willingness to file all required waivers to permit of the final determination of the

> above exceptions before the expiration of any period of limitation provided by law, and will forthwith transmit such waivers to be filed in connection herewith as soon as the same can be prepared and properly executed.

The protest was verified by A. A. Schlesinger, who avers that he was vice president and treasurer of the Chemical Company during the tax years in question (1917 and 1918), and was an officer of the other companies mentioned; that he was and is familiar with their affairs and authorized to make the verification. (R. 138, 48–52.)

On December 14, 1925, the Commissioner addressed a 30-day notice to the Chemical Company of a tentative determination of a deficiency of $211,227.75. The notice contained a statement that "1917 waiver filed Dec. 31, 1924 is in effect until April 1, 1926." (R. 138, 53–54.) On January 11, 1926, a protest on behalf of the Chemical Company against this determination was filed by A. A. Schlesinger which contains the following statement (R. 138–139, 58–60):

> The taxpayer hereby places on record its willingness to file all required waivers to permit of the final determination of the above exceptions before the expiration of any period of limitation provided by law and will forthwith transmit such waivers to be filed in connection herewith as soon as the same can be prepared and properly executed, and in the meantime and pending

the receipt of such formal waivers, it agrees that this offer and agreement shall operate and have the full force and effect of such formal waivers in all respects as though the same were filed herewith. (R. 139.)

This protest was sworn to by A. A. Schlesinger in the following form (R. 60, 139):

> A. A. SCHLESINGER being first duly sworn says that he was during the year 1917 the vice-president and treasurer of the Newport Chemical Works, Inc., and continued as such until May, 1919, and thereafter was the president of the company until its dissolution in the year 1920.
>
> That prior to the dissolution of said company all of its assets and property was transferred to and taken over by the Newport Company, a corporation organized under the laws of Delaware, which in consideration thereof assumed and agreed to pay all of the liabilities of said Newport Chemical Works, Inc., and said Newport Company has even since continued to be the owner of all of such property and assets in so far as the same have been preserved or are still in existence. That this affiant is now president of the Newport Company and is in active charge, management and direction of its affairs.
>
> That he has read the foregoing protest and exceptions and that the same are true to the best of his knowledge, information and belief.
>
> [Signed] A. A. SCHLESINGER.

On January 12, 1926, a waiver of time for assessment of 1917 taxes was signed in the name of the Chemical Company by H. J. Schlesinger, vice president, and filed with the Commissioner January 20, 1926, stating that it should be effective until December 31, 1926. (R. 134.)

On November 6, 1926, a waiver extending the period for assessment of the 1917 taxes, to December 31, 1927, was executed by respondent, by A. A. Schlesinger, president. Under the name of respondent appears the word "taxpayer" and below the signature the following words appear "As successors in Interest to the Newport Chemical Works." (R. 135.)

On March 14, 1927, the Commissioner mailed to respondent a 60-day notice proposing to assess, under Section 280 of the Revenue Act of 1926, against respondent as transferee of the Chemical Company, a liability of $43,527.25 for income and profits taxes of the latter company for 1917. (R. 137.) Respondent appealed from the Commissioner's determination to the Board of Tax Appeals.

The Board held that assessment and collection of tax against the Chemical Company were barred after April 1, 1924, and the subsequent waivers were void because the Chemical Company had been dissolved; that since assessment and collection against the transferor, the Chemical Company, were barred prior to the passage of the Revenue Act of 1926, assessment and collection of the liability

of respondent as transferee was also barred. (R. 143.) On appeal, the Circuit Court of Appeals sustained the Board.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In failing to hold that the waiver dated November 6, 1926, signed by respondent as "taxpayer" and as successor in interest to the Newport Chemical Works, Inc., was sufficient to extend the period of limitations for assessment and collection of the liability of respondent as transferee and successor in interest of the Newport Chemical Works, Inc., for the deficiency in tax of the latter company for the year 1917.

2. In failing to hold that the waiver dated November 6, 1926, signed by respondent as "taxpayer" and as successor in interest to the Newport Chemical Works, Inc., together with the informal waiver incorporated in the protest executed and verified under date of January 8, 1926, signed and sworn to by A. A. Schlesinger, president of respondent, were sufficient to extend the period of limitations for assessment and collection of the liability of respondent as transferee and successor in interst of the Newport Chemical Works, Inc., for the deficiency in tax of the latter company for the year 1917.

3. In failing to hold, upon the facts found, that the Newport Company is estopped to deny the validity of the several waivers set out in the find-

ings of fact executed in the name of the Newport Chemical Works, Inc.

4. In holding that the decree of the Supreme Judicial Court of Maine dated March 1, 1920, was valid and effective to dissolve the Newport Chemical Works, Inc.

5. In failing to hold that the decree of the Supreme Judicial Court of Maine dated March 1, 1920, was void, and subject to collateral attack in this proceeding.

6. In holding that the assessment and collection of the liability of the respondent for taxes imposed upon the Newport Chemical Works, Inc., was barred by the statute of limitations.

7. In failing to hold that respondent was liable under Section 280 of the Revenue Act of 1926 for any deficiency in income tax due from the Newport Chemical Works, Inc., for the taxable year 1917,

REASONS FOR GRANTING THE WRIT

1. The decision of the court below substantially conflicts with the decision in *Phillips* v. *Lyman H. Howe Films Co.*, 33 F. (2d) 891 (C.C.A. 3d). In that case, a corporation formed through the consolidation and merger of two other corporations, signed a waiver for and on behalf of one of the predecessor corporations extending time for making assessments against the latter. The court held that the waiver was effective to extend the period of limitations, thus permitting the consolidated corporation to maintain an action for refund of an

overpayment of tax by the predecessor. In the present case, the waiver dated November 6, 1926, was signed by respondent, as "taxpayer" and "as successor in interest" to the Chemical Company. This waiver states that the Chemical Company consents to the later assessment, etc. The execution of the waiver was the act of respondent and must have been intended by it as a consent on its part to extend the statutory period for assessment and collection of its liability as transferee. Whether it should be construed as a waiver of the time for assessment against the Chemical Company, or against respondent as transferee and obligor, seems unimportant, since the deficiency was asserted against respondent within the time as extended by the terms of the waiver.

The decision is also in substantial conflict with *Lucas* v. *Hunt,* 45 F. (2d) 781 (C.C.A. 5th), and *Warner Collieries Co.* v. *United States,* 63 F. (2d) 34 (C.C.A. 6th).

There were several prior waivers, which will be referred to below, some of which were executed in the name of the Chemical Company after its dissolution. We contend that these waivers were binding on respondent and hence extended the statutory period from time to time so that assessment was not barred at the time the waiver of November 6, 1926, was executed. But even if the earlier waivers are invalid and the statutory period had therefore expired prior to the execution of the

waiver of November 6, 1926, the period could, nevertheless, be waived after its expiration [2] unless such a waiver is made ineffective by the provisions of Section 1106 (a) of the Revenue Act of 1926 (*infra*, p. 24). That section provides that the bar of the statute shall operate to extinguish the liability as well as bar the right, but it was repealed as of the date of its enactment by Section 612 of the Revenue Act of 1928 (*infra*, p. 24). The question of the effect of a waiver given in these circumstances will come before this Court during the present Term in the following cases, which are now pending on certiorari: No. 18, *Guy T. Helvering, Commissioner of Internal Revenue* v. *Northern Coal Company;* No. 19, *Guy T. Helvering, Commissioner of Internal Revenue* v. *C. H. Sprague & Son Company;* No. 20, *Guy T. Helvering, Commissioner of Internal Revenue* v. *United States Refractories Corporation;* No. 21, *Guy T. Helvering, Commissioner of Internal Revenue* v. *Oswego and Syracuse Railroad Company.*

2. The latter question becomes material only in case it should be held that assessment of the tax was barred prior to the execution of the waiver of November 6, 1926. We contend, as stated above, that the bar of the statute had at no time intervened because of waivers executed from time to time in

[2] *McDonnell* v. *United States*, 288 U.S. 420; *Pacific Coast Co.* v. *McLaughlin*, 288 U.S. 426; *Stange* v. *United States*, 282 U.S. 270; *Burnet* v. *Railway Equipment Co.*, 282 U.S. 295.

the name of the Chemical Company. But even if they were invalid, the informal waiver contained in a protest filed with petitioner on January 11, 1926, was effective to revive and extend the statutory period until the waiver of November 6, 1926, was executed. The protest related to the tax liability of the Chemical Company but it was signed and sworn to by the president of the respondent. It states that the "taxpayer" records its willingness to file all required waivers to permit final determination of the exceptions taken to a proposed assessment, and agrees that the protest shall operate as a waiver until formal waivers are filed. (R. 138–139.) This clearly evidenced the intention of the respondent to waive any limitation for assessment of the tax against itself. The statute does not prescribe the form of waiver, nor is statutory authority necessary to make a valid waiver. *Aiken* v. *Burnet,* 282 U.S. 277; *Brown & Sons Co.* v. *Burnet,* 282 U.S. 283. This informal waiver would seem to be sufficient unless the Commissioner's signature is necessary. This question is now before this Court in No. 20, *Helvering* v. *United States Refractories Corporation, supra.*

3. Of the prior waivers, the first one signed by the Chemical Company was given December 15, 1920, and expired April 1, 1924. No question regarding this waiver has been raised. Thereafter three waivers were given which extended the statutory period from the latter date from time to time until December 31, 1926, without any break.

(R. 132–134.) These waivers were signed in the name of the Chemical Company, by H. J. Schlesinger, vice president. They were held invalid because the Chemical Company, under the decree of the Supreme Judicial Court of Maine (R. 129) had ceased to exist after March 1, 1920. The evidence shows that these waivers were procured by and signed with the assent of the respondent. (R. 32–33, 36–39, 48–52, 58–60, 63.) The respondent was the real party in interest and received the benefit of the reconsideration given to the tax liability of the Chemical Company. We believe the ruling of the court, so far as these waivers are concerned, conflicts in principle with the decision in *Warner Collieries Co.* v. *United States, supra.*

4. The decision of the court below in holding valid the decree of the Supreme Judicial Court dissolving the Chemical Company seems to be contrary in principle to decisions of this Court.

The statutes of Maine provide that the Supreme Judicial Court upon application by bill in equity may decree the dissolution of a corporation and upon dissolving such corporation shall appoint one or more trustees; but upon proof that there are no existing liabilities and no existing assets requiring distribution among the stockholders the court may dissolve the corporation without the appointment of trustees or receivers. Revised Statutes of Maine, 1916, c. 51, Sections 89, 90 (*infra,* pp. 24, 25). Here the bill of the Chemical Company's stockholders recited that there were existing liabilities

and no existing assets. (R. 19.) The corporation's answer admitted all the averments of the bill. (R. 20.) The decree recited that the cause was heard upon bill and answer, but nevertheless it was ordered that the corporation should be dissolved without appointment of a trustee or receiver. (R. 21.) There was thus no provision made for the appointment of any person to collect or administer any corporate funds for the benefit of creditors despite the fact that it appeared on the face of the record that there were existing liabilities.

It would seem that under these circumstances the court had no jurisdiction or power to enter a decree of dissolution without the appointment of trustees. It is made by statute a condition precedent to such decree that there shall be no existing liabilities and the record of the proceedings discloses on its face that the jurisdictional prerequisites for the decree were lacking. Where it appears that facts necessary for jurisdiction were absent the judgment of a court is void and may be collaterally attacked. Cf. *Thompson* v. *Whitman,* 18 Wall. 457; *Williamson* v. *Berry,* 8 How. 495; *Old Wayne Life Ass'n* v. *McDonough,* 204 U.S. 8; *Simon* v. *Southern Railway,* 236 U.S. 115, 126–128. The same is true when it appears that the court did not have jurisdiction to grant the particular remedy which was given or where the remedy granted was without the scope of the prayer. *Glover* v. *Brown,* 32 Idaho 426; *Sache* v. *Wallace,* 101 Minn. 169; *Cushman* v. *Warren-Scharf Asphalt*

Paving Co., 220 Fed. 857, 861 (C.C.A. 7th), certiorari denied, 238 U.S. 621. Likewise the judgment is void and subject to collateral attack where the court has jurisdiction of the subject matter and the parties but enters a judgment outside the power granted by law. *United States* v. *Walker*, 109 U.S. 258, 266–267; *Bigelow* v. *Forrest*, 9 Wall, 339; *Windsor* v. *McVeigh*, 93 U.S. 274, 282–283.

Since the Maine court transcended in the extent and character of its decree the law which was applicable to it, the decree is void and ineffective to accomplish a dissolution and invalidate the waivers. The failure to appoint a trustee or receiver is more than a mere procedural defect. See *Elston* v. *Elston & Co.*, 159 Atl. 731. Cf. *In re Wolf Mfg. Industries*, 56 F. (2d) 64 (C.C.A. 7th).

5. It is important that the question be settled whether a taxpayer who is liable as transferee is bound by a waiver on behalf of its transferor, both where the waiver is executed by the transferee and where the transferee secures its execution in the name of a transferor corporation which has been dissolved. These questions are involved in three cases now pending in the Circuit Court of Appeals for the Seventh Circuit, involving about $2,000,000 in taxes. In those cases, which were consolidated before the Board of Tax Appeals, the petitioners before the Board were this respondent and the Youngstown Sheet & Tube Company. Tax liabilities were asserted against them as transferees, re-

spectively, of the assets of a number of other corporations, including in the case of this respondent liabilities of the Chemical Company for taxable years other than 1917. There is involved in that case also construction of the waiver given by the respondent dated November 6, 1926, referred to above, and there are other facts which are similar to those in the present case. The question of whether a transferee, who is liable for a tax imposed upon the transferor, may waive the period of limitations against the transferor is also involved in a case now pending in the Ninth Circuit (*Commissioner* v. *Elmer D. Bryson*). In view of the conflict mentioned above, the question will very likely continue to arise, and it should therefore be settled by this Court.

Wherefore, it is respectfully urged that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Seventh Circuit be granted.

J. CRAWFORD BIGGS,
Solicitor General.

OCTOBER 1933.

APPENDIX

REVENUE ACT OF 1924, C. 234, 43 STAT. 253

SEC. 277. (a) Except as provided in section 278 * * *

* * * * *

(2) The amount of income, excess-profits, and war-profits taxes imposed by * * * the Revenue Act of 1916, the Revenue Act of 1917, * * * and by any such Act as amended, shall be assessed within five years after the return was filed, and no proceeding in court for the collection of such taxes shall be begun after the expiration of such period. (U.S.C., Title 26, Sec. 1057.)

SEC. 278. (c) Where both the Commissioner and the taxpayer have consented in writing to the assessment of the tax after the time prescribed in section 277 for its assessment the tax may be assessed at any time prior to the expiration of the period agreed upon. (U.S.C., Title 26, Sec. 1060.)

REVENUE ACT OF 1926, C. 27, 44 STAT. 9

SEC. 274. (a) If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this title, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within 60 days after such notice is mailed (not counting

Sunday as the sixtieth day), the taxpayer may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. Except as otherwise provided in subdivision (d) or (f) of this section or in sections 279, 282, or 1001, no assessment of a deficiency in respect of the tax imposed by this title and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 60-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3224 of the Revised Statutes the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court. (U.S.C.App., Title 26, Sec. 1048.)

Subparagraph (a) (3) of Section 277 (U.S.C.App., Title 26, Sec. 1057) is substantially the same as subparagraph (a) (2), Section 277 of the Revenue Act of 1924, given above.

Section 278, paragraph (c) (U.S.C.App, Title 26, Sec. 1060), is the same as 278 (c) of the Revenue Act of 1924, given above.

SEC. 280. (a) The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this title (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and

proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this title or by any prior income, excess-profits, or war-profits tax Act.

* * * * *

(b) The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the taxpayer; or

* * * * *

(c) For the purposes of this section, if the taxpayer is deceased, or in the case of a corporation, has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period that would be in effect had the death or termination of existence not occurred.

(d) The running of the period of limitation upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under subdivision (a) of section 274 of the transferee of fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary, and for 60 days thereafter. (U.S.C.App., Title 26, Sec. 1069.)

SEC. 1106. (a) The bar of the statute of limitations against the United States in respect of any internal-revenue tax shall not only operate to bar the remedy but shall extinguish the liability; but no credit or refund in respect of such tax shall be allowed unless the taxpayer has overpaid the tax. The bar of the statute of limitations against the taxpayer in respect of any internal-revenue tax shall not only operate to bar the remedy but shall extinguish the liability; but no collection in respect of such tax shall be made unless the taxpayer has underpaid the tax. (U.S.C.App., Title 26, Sec. 1249.)

REVENUE ACT OF 1928, C. 852, 45 STAT. 791, 875

SEC. 612. REPEAL OF SECTION 1106 (a) OF 1926 ACT.

Section 1106 (a) of the Revenue Act of 1926 is repealed as of February 26, 1926.

REVISED STATUTES OF MAINE (1916), C. 51

SEC. 81. *Existence after charter expires.* R.S., c. 47, §77. Corporations, whose charters expire or are otherwise terminated, have a corporate existence for three years thereafter; to prosecute and defend suits; to settle and close their concerns; to dispose of their property; and to divide their capitals.

SEC. 89. *Bill in equity against corporations for dissolution; if no liabilities, dissolution may be had without trustees.* R.S., c. 47, § 80. Except where otherwise provided by statute, whenever at any meeting of its stockholders, legally called there-

for, such stockholders vote to dissolve such corporation, a bill in equity against the same for dissolution thereof, may be filed by any officer, stockholder or creditor in the supreme judicial court, in the county in which it has an established place of business, or in which it held its last stockholders' meeting; upon said bill, such notice shall be given as may be ordered by any justice of said court, in term time or vacation, and upon proof thereof, such proceedings may be had according to the usual course of suits in equity, that said corporation shall be dissolved and terminated. Upon proof that there are no existing liabilities against said corporation, and no existing assets thereof, requiring distribution among the stockholders, said court may dissolve said corporation without the appointment of trustees or receivers.

SEC. 90. *Jurisdiction of court; court may superintend collection and distribution of assets.* R.S. c. 47, § 81. Said court has jurisdiction in said cause to appoint receivers, issue injunctions, and pass interlocutory decrees and orders, according to the usual course of proceedings, in equity; and shall, moreover, upon dissolving said corporation, or upon terminating its charter, appoint one or more trustees, who shall have all the powers conferred upon similar trustees by sections eighty-one, eighty-eight and ninety-eight, or by any other law of the state, with such special powers as may be given them by said court. But, notwithstanding the appointment of such trustees, said court may superintend the collection and distribution of the assets of said corporation, and may retain said bill for that purpose.

SEC. 101. *Capital not to be divided until debts paid.* R.S. c. 47, § 92. Corporations, not created for literary, benevolent or banking purposes, shall not so divide any of their corporate property as to reduce their stock below its par value, until all debts are paid, and then only for the purpose of closing their concerns.

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